# Exhibit 1

Declaration of Don J. Wood

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### Background and Experience

1. My name is Don J. Wood. I am a principal in the firm of Wood &Wood, an economic and financial consulting firm. My business address is 30000 Mill Creek Avenue, Suite 395, Alpharetta, Georgia 30022. I provide economic and regulatory analysis of the telecommunications, cable, and related convergence industries with an emphasis on economic policy, competitive market development, and cost-of-service issues.

2. I received a BBA in Finance with distinction from Emory University and an MBA with concentrations in Finance and Microeconomics from the College of William and Mary. My telecommunications experience includes employment at both a Regional Bell Operating Company ("RBOC") and an Interexchange Carrier ("IXC"). Specifically, I was employed in the local exchange industry by BellSouth Services, Inc. in its Pricing and Economics, Service Cost Division. My responsibilities included performing cost analyses of new and existing services, preparing documentation for filings with state regulatory commissions and the Federal Communications Commission ("FCC"), developing methodology and computer models for use by other analysts, and performing special assembly cost studies.

3. I was employed in the interexchange industry by MCI Telecommunications Corporation, as Manager of Regulatory Analysis for the Southern Division. In this capacity I was responsible for the development and implementation of regulatory policy for operations in the southern U. S. I then served as a Manager in

MCI's Economic Analysis and Regulatory Affairs Organization, where I participated in the development of regulatory policy for national issues.

4. I have testified on telecommunications issues before the FCC, state, federal, and overseas courts, and before alternative dispute resolution tribunals. I have also presented telecom related testimony before the regulatory commissions of thirty-five states, Puerto Rico, and the District of Columbia. A listing of my previous testimony is attached as Exhibit DJW-1.

5. I have been asked by APCC to respond to comments submitted in response to the Commission's October 31, 2003 *Order and Notice of Proposed Rulemaking*, in particular those related to APCC's Per-Call Cost Study (submitted on August 29, 2002 as an attachment to APCC's request that the Commission issue an NPRM).

6. The APCC Per-Call Study was conducted by me and by an experienced analyst working pursuant to my direct supervision. The APCC study applies the Commission's bottom-up cost methodology as set forth in the *Third Report and Order* and updates the 1999 *application* of that methodology – but does not alter the methodology itself - with input values that represent conditions in the industry at the time the study was conducted (3Q 2002). The results of the APCC Per-Call Cost Study represent a value that (1) was developed in a manner fully consistent with the Commission's methodology in the *Third Report and Order* and (2) accurately reflects changes in the industry and marketplace since the Commission's analysis was performed in 1999.

**The Methodology Used To Calculate Dial-Around Rates**

7. Several of the commenters take issue with APCC's application of the Commission's methodology for calculation of fair compensation for a dial-around call.

AT&T asserts (p. 3) that the APCC Study "abandon(s) the methodology that the Commission adopted in the *Third Report and Order* and that the D.C. Circuit affirmed on appeal." AT&T is incorrect. Far from being abandoned, the Commission's methodology has been followed.

8. In reality, the methodology remains unchanged and was faithfully reproduced in APCC's cost study. Two changes to the *application* of that methodology have been made, as fully explained in APCC's filing and in the cost study documentation. First, information unavailable in 1999 regarding non-payment by IXCs of dial-around compensation amounts owed was available in 2002, and appropriately reflected in the study. Second, the method used to collect an appropriate set of input values to be used with the Commission's methodology was improved. In its analysis described in the *Third Report and Order,* the Commission had limited information at its disposal and ultimately had to rely on estimates and broad averages submitted by industry participants (and sometimes to utilize an average of conflicting estimates or to calculate an average of averages).[1] In spite of its limitations, this information represented the best data available at that time. In order to develop a reliable set of inputs that reflects current values a more extensive data collection effort was undertaken. This effort yielded information that is more reliable than that available in 1999 for two primary reasons: (1) while average values are ultimately utilized to populate the Commission's methodology, the development of these averages is now described in detail (detail that was unavailable for the averages relied upon by the Commission in 1999), and (2) the information represents the characteristics of a demonstrably broad base of payphone locations.

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[1] For example, see paragraphs 169, 174, 176-177, 179, 186.

9. According to AT&T's theory, the development of a dial-around compensation rate in any subsequent time period must either be based on the same inputs relied upon in 1999, or must be based on a similar set of broad averages with no demonstrated basis. Surely the Commission did not intend for the data limitations present in 1999 to become institutionalized into the methodology itself, so that any new information must be discarded, or that new, more reliable, or more detailed sources of information must be ignored.

***Identification of Marginal Payphone Locations***

10. The commenters argue that the APCC study does not properly apply the "marginal payphone" concept detailed in the *Third Report & Order* (AT&T at pp. 12-16, WordlCom at p. 17, Sprint at p. 13). In reality, commenters are merely pointing out the statistically obvious: the individual data points used to calculate an average have varying characteristics.

11. AT&T, WorldCom, and Sprint all argue that the APCC study errs by defining marginal payphone locations as those in which revenue is insufficient for the payphone provider to make commission payments to the location owner. As an initial matter, they are incorrect. The locations identified as "marginal" in the APCC study are actually limited in two ways: locations for which the payphone provider does not pay a commission to the location owner, *and* those locations for which the location owner does not pay a commission or fee to the payphone provider are excluded from the analysis.

12. The result, according to the commenters, is a failure to eliminate from the survey "sample payphones that do not allow the owner to recoup its costs, including earning a normal rate of return" (AT&T at p. 14). As explained below, the assertion that

this "failure" invalidates the study is at odds with the Commission's use of what would have to be considered an equally "invalid" methodology as set forth in the *Third Report & Order*, with basic ratemaking principles historically relied upon by the Commission, and with basic statistics.

13. It is instructive to review how the Commission *actually* approached the problem of identifying marginal payphone locations in the *Third Report & Order:*

> In order to determine the number of calls at a marginal location, we consider three basic scenarios. In the first scenario, a premises owner is willing to pay its LEC PSP to install a payphone on its property, even though the payphone does not generate sufficient revenue to pay for itself. In the second scenario, the payphone on the premises owner's property generates sufficient revenue to pay for itself. This premises owner need not pay the LEC PSP for the operation of the payphone, but the LEC PSP may not generate enough revenue from the payphone location to pay the premises owner a location payment. In the third scenario, the payphone generates revenue sufficient for the premises owner to require the LEC PSP to pay a location rent. ¶ 146.

In its analysis, the Commission's first step in the identification of "marginal" payphone locations is to identify those locations in which no payment is made from the premises owner to the payphone provider and no payment is made from the payphone provider to the premises owner. In order to estimate the call volume at such a "no payment" location, the Commission asked the RBOC Coalition to submit "the number of payphone calls that must be placed in order for the premises owner to not have to pay the LEC PSP for the payphone," and "the number of payphone calls that must be placed in order for the LEC PSP to begin paying a location payment to the premises owner." In other words, the Commission adopted the concept of "no payment locations" as a means of identifying "marginal" locations.

14. In response to this request, the RBOC Coalition reported three findings back to the Commission: (1) "*on average*, if the payphone had 414 calls per month, the premises owner would not have to pay for the payphone," (2) "*on average*, the LEC PSP would have to pay location rents to a premises owner that had a payphone with 464 calls or more per month," and (3) the decision to make a payment to a location provider or require a payment from the premises owner is not based solely on call volume, but also considers location-specific factors, such as the mixture of call types and the upkeep costs of the payphone.

15. A consideration of this actual underlying information relied upon by the Commission is important for several reasons. First, the RBOC coalition reported averages of call volumes. Second, even after reporting averages, a spread of 50 calls per month exists between the average call volume at a location for which the LEC PSP would have to pay location rents to a premises owner and the average call volume at a location for which the premises owner would not have to pay for the payphone. Third, call volume is one of the factors, but not the only factor, that drives this decision; location-specific factors also play a role.

16. There is absolutely no presumption in the Commission's *Third Report & Order* that this approach is intended to precisely capture the actual characteristics at any actual individual payphone location. In other words, there is no expectation that *the* marginal payphone exists – a place where the characteristics specific to that location (including LEC line charges, maintenance, mixture of calls types, etc.), combined with either the call volume actually experienced or with a call volume of exactly 439 calls per month, will cause that location to exactly break even (and do so month after month). It is an inescapable mathematical fact that, even if the "no payment by premises owner"

value of ≥414 calls/month and "no payment by payphone provider" value of ≤464 calls/month were not themselves averages, and even if the factors that determine the call volume at a "marginal" phone did not vary by location, the Commission's decision to take the midpoint of values that differ by 50 calls/month to develop an estimated call volume at a "marginal" location means that some locations with the call volume identified as "marginal" by the Commission will generate more revenue and some will generate less revenue than is necessary to "recoup [the PSP's] costs, including a normal rate of return." It is extremely rare that *any* "no payment" locations would *ever* generate the revenue in a given month that is *exactly* the amount needed for that location to "recoup its costs, including a normal rate of return." It is even less likely that any "no payment" locations, given their individual cost structure, would generate the revenue in a given month that is *exactly* the amount needed for that location to "recoup its costs, including a normal rate of return" at a call volume of 439 calls/month.[2]

17. The Commission's pragmatic approach to the problem it faced is a reasonable one. It would not be practical to establish an individual dial-around compensation rate for each and every payphone location, or even each and every payphone location with call volumes identified as "marginal" by the RBOC Coalition and Commission in 1999. Instead, the Commission established an average dial-around compensation rate based on the average cost and call volume characteristics of "no payment" locations.

18. AT&T argues (p. 14) that "APCC's study has skewed its results by failing to eliminate from its survey sample payphones that do not allow the owner to 'recoup

[2] For purposes of this discussion, I am treating the 1999 values as current; in other words, this conclusion holds for these locations in 1999, and does not rely on an assumption of a change in call volumes since that time.

its costs, including earning a normal rate of return'." To understand the fallacy of AT&T's argument, it is first important to note that the Commission likewise did not limit its analysis to locations that did not under-recover or over-recover costs (either at actual call volumes for that location or the estimated average call volume of 439 calls/month). Instead, it relied on RBOC Coalition-provided data that showed a range of call volumes between an average "no payment by premises owner" location and an average "no payment by payphone provider" location. As explained above, any individual location would generate *exactly* the revenue necessary to "recoup its costs, including earning a normal rate of return" only on a random basis.

19. By requesting and relying on the RBOC Coalition information, the Commission effectively employed a two-step process. First, it identified the characteristics of a set of archetypical locations for which no payment was made by the payphone provider to the location owner and no payment was made by the location owner to the payphone provider. It then identified the value (in this case an average of values) of the variable – monthly call volume – associated with these location characteristics that was needed to calculate a per-call cost. The APCC study follows the same approach: it identifies locations for which no payment was made by the payphone provider to the location owner and no payment was made by the location owner to the payphone provider, and calculates an average monthly call volume for these locations. The only difference is that the APCC study collected information on actual locations.

20. The reasonableness of this approach, and the fundamental error inherent in AT&T's argument, can be ascertained by considering a base of "no payment" payphone locations. The absence of payments in either direction indicates that both the location owner and payphone provider have made a market-driven decision that, based

on the characteristics of that location, the payphone meets the Commission's definition of marginal: just enough revenue to keep it in place, not enough revenue to generate a commission payment to the location owner. To keep this base of phones in place, the Commission concluded that a dial-around rate of approximately $.24 would be appropriate, based on average volume of 439 calls/month. Of course, the calculation of the dial-around rate in this manner means that some of these phones will generate slightly more revenue than is necessary, and some may generate slightly less revenue than is necessary (few, if any, will generate exactly the necessary amount of revenue in any given month, and even fewer will do so over time). The base of "no payment" phones can be relied upon to be representative of marginal locations because these locations "self-select" themselves out of this category if conditions change. Market forces will cause a location that consistently generates higher than necessary revenues to become a commissioned location, thereby removing it from the "marginal" population. Likewise, a location that consistently generates lower than necessary revenues will either become a location that is supported by a premises owner payment or will cease to be a location at all. These locations are likewise removed from the "marginal" population by market forces. Over time, the base of "no payment" phones is likely to be a very good proxy for "marginal" locations.

21. AT&T argues that the APCC study is biased because it does not remove from the base of "no payment" phones any and all locations whose revenues are less than the level necessary to "recoup its costs, including earning a normal rate of return." AT&T does not explain why, if these locations are removed, it is not also necessary to remove from the base of "no payment" phones any and all locations whose revenues are higher than the level necessary to "recoup its costs, including earning a normal rate

of return." Clearly, the inclusion of such locations would likewise produce a bias, this time in an upward direction. Of course, if all zero-commission, "no payment" locations are eliminated because the revenues for that location are not exactly equal to the amount needed to recover costs, there would be no locations left to classify as "marginal."

22. AT&T and its statistician make the tautological observation that some members of a population have values higher than the average, and some members have values lower than the average. They are asking the wrong question. The relevant question is *not* "Do all locations classified as 'marginal' permit cost recovery, but no more, to the penny?" but rather "Is the method of identifying 'marginal' locations by considering the fact that the operation of market forces has resulted in no payments between the location owner and payphone provider a reasonable approach?" The answer to this second question is yes: any location whose revenues deviate significantly – in either direction - from the level needed to permit cost recovery is removed (via the operation of market forces) from the base of locations considered "marginal." The magnitude of the revenue deviation needed to trigger such a change is the magnitude considered significant by the location owner and payphone provider. This is fully consistent with the Commission's concept of a "marginal" location set forth in the *Third Report and Order*.[3]

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[3] It is important to note that the consequences to the public are very different depending on the reason that the location is no longer classified as 'marginal." A payphone with higher than necessary revenues will still be in place, while a payphone with insufficient revenues may be removed and no longer be available. From a public policy perspective, it would be arguably more important to remove from the base of "marginal" locations those with higher than necessary revenues than it would be to remove those with lower than necessary revenues. The APCC study does not adopt such an approach, even though it will be justifiable and would result in a higher dial-around rate; rather, it permits market forces, as reflected in payments (and lack of

23. The use of reasonable averaging is a well-established ratemaking principle. Each of the commenters has experience, for example, with the development of cost-based rates for unbundled network elements. If a complete and thorough application of the Commission's Part 51 rules results in a UNE loop rate of $10/month, there is no presumption that *all* UNE loops cost the ILEC exactly $10/month to provide; if fact, there is no presumption that *any* individual UNE loop costs exactly $10/month. Pursuant to the AT&T theory, the results of such a study would be biased downward if all loops that actually cost less than $10/month to provide are not removed from the sample. By definition, of course, the removal of the "low cost loops" to eliminate the "downward bias" would do two things: (1) it would change the average, creating a whole new set of "low cost loops" that would need to be removed in order to eliminate Dr. Bell's odd notion of "bias," and (2) it would compel a question of why it is not also necessary to eliminate the "upward bias" by removing a loops whose costs are higher than $10/month. Of course, if all the higher than average and lower than average loops are removed, the only thing left would be that elusive UNE loop that costs exactly $10/month to provide.

24. In this light, Dr. Bell's hypothetical (described by AT&T at p. 15) defies logic. He suggests that, out of the 108 "marginal" locations that are used to calculate APCC's average call volume, it is reasonable to assume that 54 of these locations have revenues exactly equal to their costs (i.e. are "truly marginal," in Dr. Bell's parlance) and 54 have revenues that are insufficient to permit cost recovery (yet the magnitude of this shortfall is insufficient to cause the payphone provider to insist on a payment from

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(Footnote continued)
payments) between the payphone provider and premises owner, to determine if a location is "marginal."

the location owner or to cause the payphone provider to remove the phone; otherwise the location wouldn't have been in APCC's sample). Dr. Bell doesn't explain why, in his hypothetical, there are no locations generating revenues higher than necessary to exactly permit cost recovery, or – more importantly – where he found (or, since he actually identified none, *why* he expected to find) locations whose revenues exactly equal the amount needed for cost recovery (the Commission identified no such locations in the *Third Report and Order*, nor did it indicate any expectation that any such locations actually existed).

25. Dr. Bell's hypothetical also makes the flawed assumption that call volumes are the only indicator of whether or not any payments are made between location owner and payphone provider. As the RBOC Coalition correctly pointed out when providing the information in 1999, and as the Commission readily acknowledged (¶147), other location-specific factors play a role. Dr. Bell's implicit (but critical) assumption that any individual "truly marginal" location would have a monthly call volume higher than any individual "failed to recoup costs" location is both factually incorrect and, as the Commission noted in the *Third Report and Order*, there is no reason to expect this relationship to hold. In the end, Dr. Bell's hypothetical is nothing more than an "assume one-half of the UNE loops cost exactly the average of $10, and the other half cost less" proposition: conceptually meaningless, mathematically impossible, and empirically just plain wrong.

26. The commenters' insistence on finding *the* marginal payphone location is directly analogous to the task of finding *the* $10 UNE loop: neither effort is likely to prove to be fruitful and both would certainly represent a meaningless exercise.

27. Instead, the APCC cost study follows the Commission's pragmatic and reasonable approach. From a randomly-generated sample of payphone locations, those locations for which no payment is made from location owner to payphone provider and no payment is made from payphone provider to location owner are identified. These phones are properly treated as "marginal" because while it is unlikely that any of them have a "to the penny" match between revenues and costs, none of them generates sufficient additional revenues to permit location owners, given current market conditions, to insist on commission payments, and none of them has a sufficient shortfall such that, based on current market conditions, the payphone provider can insist on a payment from the location owner or finds the removal of the phone necessary.

28. AT&T further claims (Declaration of Dr. Bell, ¶11) that APCC's data collection methods "may" include payphones "that are subsidized by a premises owner" (paragraph 11). This assertion is simply factually incorrect. Survey responses related to payphone locations in which the payphone provider pays a commission to the premises owner, *and* payphone locations in which the premises owner pays a commission to the payphone provider, were excluded from the analysis of "marginal" locations.[4] Dr. Bell's speculation that semi-public phones may have been included in APCC's analysis is also factually incorrect. Location information was collected that permitted any locations potentially characterized as semi-public to be eliminated.

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[4] The only exceptions to the pure "zero commissions" rule are those locations in which the amount paid by either party to the other is a token or trivial amount (less than 1% of phone revenues, often on a one-time basis rather than monthly agreement) that is insufficient in magnitude to materially impact the economic viability of the location.

*The Validity of the Data Collection Methods Used in the Study*

29. AT&T, through the testimony of Robert Bell, states that there is a potential for bias created by the response rate to the survey (Bell ¶13) and that bias may be created by the respondent's knowledge of the purpose of the survey. In each of the above stated concerns, Dr. Bell describes a *potential* for bias; he does not argue that the results of the APCC Study are in fact biased. For each of his stated concerns, I will explain why this potential for bias has in fact not translated into actual bias in the study results.

30. *A potential for bias is created by the response rate to the survey.* Dr. Bell is correct that information regarding 408 of the 940 payphone locations originally identified was ultimately collected. This response exceeds the rate that is typical of many often-used data collection vehicles, and the potential for such a response rate was fully considered in the development of a larger than necessary sample of payphone locations. Dr. Bell correctly points out that the existence of non-response error is dependent on two conditions: (1) a significant number of people in the survey sample do not respond, *and* (2) those not responding have a different – and relevant – set of characteristics from those who do respond. The basis for Dr. Bell's concern appears to be an assumption that potential respondents had insight into the impact that their information would have on the final result, and could therefore "self-select"[5] their information based on this insight into the process and their unique characteristics. As described in the following paragraph, there is no basis for such an assumption and

[5] In other words, these potential respondents could strategically decide whether to become respondents or non-respondents based on their expectations regarding how their information might impact the study results.

therefore no reason to assume that the non-respondents share a set of "low cost" or "high volume" characteristics.

31. *Bias may be created by the respondent's knowledge of the purpose of the survey.* Dr. Bell is correct that a limited amount of information regarding the purpose of the data collection effort was included in the instructions to the survey. This information was provided in an attempt to encourage *all* recipients to respond with the requested information. The first fallacy in Dr. Bell's argument is his assumption that all potential survey respondents were aware that they "stood to benefit if the APCC study showed a low volume of calls and high [per-location] costs." There is absolutely no information that suggests such a level of insight among potential respondents. The written instructions to all potential respondents stressed the need for accurate and unbiased information. Other than a cover letter describing the importance of the information, all contact between potential respondents and APCC was strictly limited. Similarly, all contact with potential respondents was strictly limited to one individual at Wood & Wood in order to carefully control the information provided to respondents. The email and telephonic requests for clarification made to Wood & Wood by potential respondents suggested absolutely no insight whatsoever into even the basic question of whether a higher or lower reported call count would impact the results in a "beneficial" way. Dr. Bell assumes an awareness and understanding of the Commission's methodology that, by all appearances, simply does not exist.[6]

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[6] The only possible exceptions to this observation are the large payphone providers who were contacted. As a rule, these providers did not seek clarification of the survey instructions and, as a result, I do not have direct experience with their level of insight. In order to allay Dr. Bell's concerns, it is notable that these large providers responded to the survey (i.e. they did not "self-select" themselves as non-respondents based on their understanding of the characteristics of their locations and the

32. The second fallacy in Dr. Bell's argument is his implicit assumption that all potential respondents had an insight into the characteristics of other payphone providers. In order for a potential respondent to make a strategic decision to "self select" itself as a non-respondent, it would need to have some insight into both its own characteristics and how those characteristics compare to an average or baseline value for other providers. Again, there is absolutely no evidence that any potential respondents had such insight. To the contrary, all provider-specific information has been closely held and treated as trade secret information by Wood & Wood (acting as an independent third party repository of this information). Provider-specific information collected through this survey is not available to the APCC or to any individual member, and neither the APCC nor any individual provider had access to the industry average or baseline values until after data collection was completed and the results of the study published.

33. In short, no provider had knowledge of how its characteristics compared to the average, and therefore no provider had a basis upon which to strategically withhold its information in hopes of influencing the study result in a "beneficial" direction.

***The Rate of Return Assumption Used in the Study***

34. Sprint argues (p. 15) that the rate of return assumption of 11.25% is not reasonable and that "IRS overpayment rates" should be utilized as a proxy for the "time value of money." The appropriate cost of capital in an analysis such as this one must reflect both the current state of financial markets and a risk level that is specific to the

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(Footnote continued)
Commission's methodology), yet the inclusion of the locations resulted in a decrease in the reported per-call cost results.

industry and to the operations of the specific company in question. Payphone providers, even those that are demonstrably well managed, have consistently reported an inability to obtain capital and have obtained capital (primarily debt) only at high rates. The 11.25% used in the APCC study reasonably reflects the current level of risk.[7]

***Equipment Cost Assumptions Used in the Study***

35. The commenters argue that the equipment investment values included in the Dial-Around Cost Study are inappropriate because they fail to reflect accumulated depreciation of the embedded base of assets (AT&T p.19-20, Sprint p.15). This argument has no merit for at least three reasons. First, rational economic decisions are based on the replacement cost, not booked cost, of assets. If payphone providers are permitted to recover only booked investment minus accumulated depreciation, they will be unable to invest in replacement assets when the existing assets reach the end of their useful life. As the Commission has concluded on numerous occasions, the relevant economic is the cost to replace an asset (or the assets necessary to replace consumed capacity). Second, the Commission defined the cost basis for the bottom up methodology to be forward-looking. In the *Third Report and Order*, the Commission listed specific differences between the cost methodology used in this context and the Commission's TELRIC methodology adopted for other purposes.[8] This list of differences does *not* include a different treatment of the return on, or return of, investments. The TELRIC methodology is (properly) based on replacement costs.

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[7] The business risk faced by payphone providers is not simply a function of market trends or management ability. Non-payment of expected dial-around compensation, coupled with ILEC line rates that continue to be well above cost-based levels (now almost eight years after they were required to be reduced to such a level) have contributed to the business risk faced by payphone providers.

[8] Paragraph 73, including footnote 131.

Third, the Commission has previously rejected an equivalent proposal made by Sprint, who again argues (p. 15) that the dial-around compensation rate should reflect the fact that this "equipment has been almost fully depreciated." In the *Third Report and Order*, the Commission correctly concluded that the use of such a "non-economic accounting methodology alone justifies setting prices on a going-forward basis. More importantly, because the marketplace sets prices on a forward-looking basis, we do not use embedded costs in this Order."[9] Neither AT&T nor Sprint has offered a basis for either a re-invention of basic economic concepts or for a reconsideration of the Commission's conclusion.

36. Equipment prices used in the APCC study consider the acquisition cost of both new equipment and used equipment if, but only if, that used equipment has been fully restored to like-new condition in terms of appearance and operation. The equipment considered consists of "smart" phones, as deployed by independent payphone providers (and ILEC providers on a going-forward basis).

37. WorldCom attaches to its comments printouts from various websites that it argues support a lower equipment cost assumption. Even a cursory examination reveals, however, that many of these phones are "dumb" sets, liquidation items of unknown origin, items posted on an "eBay-like" board, or simply novelty items. The ads do not include complete information about the equipment to be provided with each phone. Ultimately, most of WorldCom's ads appear to have a "used car lot" level of credibility and quality assurance.

38. When calculating maintenance costs, the assumption was made that the equipment put into place would begin in new or, if refurbished, like-new condition. If

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[9] Paragraph 131.

WorldCom seeks to use an equipment cost input that reflects lower quality equipment, it is necessary to simultaneously change the assumptions regarding the maintenance required for these units.

***The Level of ILEC Line Costs***

39. Sprint (p. 17) argues that the inputs to the APCC Study related to ILEC line charges are overstated because "payphones have enjoyed significant reductions in their line costs, as a result of state implementation of the new services test." While Sprint appears to simply be parroting statements previously made by other carriers, to make such a statement clearly requires no small degree of chutzpah on their part. I have participated in such "new service test" proceedings in several states in which Sprint operates. Sprint continues to have the highest rates for payphone access services of any Tier 1 ILEC, has consistently argued against any meaningful application of the Commission's requirements (since the Commission's *Wisconsin Order*, Sprint has argued that the requirements should not be applied to it at all), and has consistently been the ILEC most reluctant to engage in serious negotiations with payphone providers. Sprint cannot simultaneously refuse to implement cost-based rates for payphone access services and argue that these costs to payphone providers have decreased.

*40.* The APCC study inputs used the ILEC line rates in effect for each location studied as of 2Q 2002. I am not aware of any state regulator that has issued an order reducing payphone access line rates since that time.

***Changes in Inputs***

41. New information indicates that since APCC's cost study was completed, PSPs participating in the study have received some additional payments for dial-around calls made during the period studied from the payphones included in the cost

study. These additional payments increased paid dial-around calls by about 7%. Inclusion of these additional dial-around calls in the call count used in the cost study would result in a $.008 reduction in the per-call compensation rate derived in APCC's cost study.

**Use of a "Top-Down" Test of Validity**

42. Commenters argue that the Commission's previous top-down approach must be used to assess the reasonableness of the results of any bottom-up analysis. Specifically, AT&T argues (p. 24) that "the Commission sought to validate the per call compensation rate that the Commission derived from its bottom up marginal cost and call volume calculations." As an initial matter, the *Third Report and Order* does not require any test of "validation" and makes clear that the bottom-up approach is the *only* accepted means of calculating a change to the dial-around compensation rate. Furthermore, the Commission's use of the top-down methodology is accurately described as a check of "reasonableness" of that rate.

43. More importantly, upon a closer review it appears that any previous correlation between the results of the Commission's top-down and bottom-up methodologies may have been largely coincidental. As AT&T points out, the top-down methodology begins with an assumed market price for a coin call and subtracts a calculated per-call cost for the coin mechanism, local call termination, and coin collection. The stated objective of this process is to create a scenario in which "all types of calls could be viewed as making the same contribution to covering joint and common costs."[10] A practical problem is created by the fact that the cost of the coin mechanism is, like most costs associated with a payphone location, volume insensitive. In order to

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10 *Third Report and Order*, paragraph 8.

apply the top-down analysis, the Commission converted these costs to a per-call basis by dividing monthly costs by an assumed number of monthly coin calls.

44. Over time, as the volume of coin calls changes the calculated per-call cost changes. As AT&T's analysis illustrates,[11] the calculated per-call cost of the coin mechanism has now more than doubled, from $.054 to $.109. Coin collection charges have likewise doubled, from $.036 to $.074. As the volume of coin calls decreases, the calculated per-call cost of these calls increases, yielding a decrease in the "contribution to covering joint and common costs." In order to maintain a constant contribution, the top-down methodology reduces the dial-around compensation rate to reflect this lower contribution for coin calls. This reduction is independent of the level of non-coin costs at a given payphone location (or the non-coin cost for payphone locations on average), and independent of the number of non-coin calls. In direct contrast, the bottom-up methodology excludes coin mechanism, coin collection, and local termination costs completely, and directly addresses the recovery of the non-coin location costs over the total (coin and non-coin) number of calls. As a result, the bottom up methodology has the distinct advantage of separating the recovery of coin-related costs from the recovery

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[11] In addition to being conceptually irrelevant in this context, AT&T's analysis suffers from a number of questionable factual assumptions. First, over the past three years ILECs in several states have reduced the local usage charges applicable to payphone access lines. The current average is likely to be less than the $.038 assumed in the *Third Report and Order*. Second, AT&T assumes a lower volume of coin calls but holds coin collection costs per month constant at $11.59 per month. This assumption is inconsistent with how these costs are incurred: coin collection is required when the payphone unit signals that it is full. Fewer coin calls is likely to result in fewer coins and a corresponding reduction in the average monthly coin collection costs. Third, AT&T updates the assumed local coin rate to $.50, but ignores other types of coin calls that should share in the recovery of coin-related costs. 0+ or 1+ coin calls are likely to generate more than $.50 in revenue. If this is the case, AT&T started at the wrong point; the average coin revenue per call is higher than $.50. Each of these flawed assumptions results in an understated required per-call contribution to joint and common costs, and thereby causes an understated rate for dial-around compensation.

of other location costs. This separation permits a "fair" rate for dial-around calls to be calculated based on the recovery of fixed (non-coin) location costs.

45. Any results generated by the application of the top down methodology offer little insight at this time. As the Commission has concluded, "if our goal is to price dial-around calls such that they make a proportionate contribution to joint and common costs, we cannot do so by basing their price on the local coin calling price, because we do not know how individual PSPs price local coin calls in relation to the recovery of joint and common costs. Therefore, upon reconsideration, we find unreliable the assumption that PSPs set prices so that each call recovers an equal amount of joint and common cost."[12] This observation is correct. The recovery of coin-related costs is, and should be, a separate and distinct consideration from the recovery of fixed location costs that are not coin related. The top down methodology assumes a given and fixed ratio of coin to non-coin calls, and assumes that a rational pricing strategy for payphone providers would be to attempt to equalize the margin among all call types at all locations. These assumptions may or may not be valid in a short-run analysis, and are unlikely to be true in a long-run analysis. In the end, any convergence – or divergence – of the results of the top down and bottom up methodologies depends on multiple factors. While the Commission may have found some comfort in the observation that similar results have been generated by these two fundamentally different methodologies in the past, there is no reason to expect such similarities to exist now or in the future. AT&T's assertion that the results of the Dial-Around Cost Study should be called into question because they cannot be reconciled with AT&T's application of the top down methodology (using the RBOC Coalition's call volumes) has no basis in

12 *Third Report and Order*, paragraph 70.

basic economic concepts, and is not supported by the Commission's conclusions in the *Third Report and Order*.

46. AT&T argues that demand elasticities must be considered when developing a "fair" rate of compensation for dial-around calls. AT&T argues (pp. 7-11) that consumer demand for "dial-around" calls is highly elastic, that any change in the dial-around compensation rate will inevitably significantly diminish consumer demand for payphone services and that any further increase in the dial-around rate will speed wireless substitution. AT&T offers no empirical data to support this assumption of high elasticity of demand for dial-around services, relying only on "AT&T's own experience that ... demand for payphone services decreases when the cost of such calls increase and when alternative means of communication are available." (AT&T p. 9) AT&T anecdotal information not-withstanding, the Commission asserted in 1999 that demand for dial-around services is inelastic.[13] AT&T's argument also implicitly assumes that the claimed demand elasticity is relatively constant across a broad base of payphone locations. This assumption is likewise unsupported and directly contradicts the Commission's previous conclusion that the elasticity of demand for particular payphone services is likely to vary among locations.[14] AT&T further implicitly assumes that elasticity will remain roughly constant across a range of prices; this assumption likewise has no empirical support. Finally, AT&T's argument relies on an important (but unstated and unsupported) argument that the marketplace can and will provide a readily-available substitute for an end user that opts not to make a dial-around call at a

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13 *Third Report and Order*, paragraphs 101-111. The Commission ultimately concluded that this information was not sufficiently reliable to form the basis of a pricing decision for dial-around compensation.

14 *Id.*, paragraph 36.

payphone. In order for the Commission to now incorporate elasticity into its pricing model, as AT&T requests, would require the abandonment of the bottom-up methodology adopted in the *Third Report and Order* and the collection of reliable data regarding the elasticity of dial-around services (information that AT&T either does not have or has chosen not to produce).

47. Unlike AT&T and Sprint, who argue for elasticity but (prudently) make no attempt at quantification, Global Crossing and Worldcom take the extra step of arguing that the elasticity is actually a value greater than 1; that is, an increase in price will create a corresponding decrease in demand that is sufficient in magnitude to cause total revenue to decrease. With no empirical support whatsoever, Global Crossing boldly states (p. 7) that the Commission's creation of the dial-around rate of $.24 in 1999 is directly responsible for the experienced reduction in call volumes, revenue, and payphone deployment. Based solely on an observation that dial-around call volumes have decreased, Global Crossing concludes that the available data suggest that the dial-around compensation rate of $.24 is too high rather than too low.

48. Global Crossing's conclusion relies on several important, but unstated, assumptions. First, it is necessary to assume that no factors have influenced the volume of dial-around calls *except* the level of the dial-around compensation rate. Second, it is necessary to assume that contrary to the information available to the Commission in 1999 the demand for dial-around services is highly elastic. Third, it is necessary to assume that this elasticity exists across a wide range of prices.[15] Fourth, it is necessary

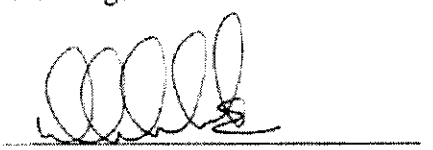
[15] Measures of elasticity apply to a single point on a products demand curve; they do not apply across multiple points unless the demand curve is linear. As a result, demand may be elastic at prices above a certain level, but inelastic for prices below that level.

to assume that demand elasticity is constant among different payphone locations (again in contrast to the Commission's conclusions in 1999). Fifth, it is necessary to assume that substitute services have been readily available in all locations and to each end user that Global Crossing now argues elected not to make a dial-around call because of price. Other than the undisputed observation that the volume of dial-around calls has decreased over the past three years, Global Crossing offers no support for any of these counter-intuitive conclusions.

49. This concludes my Declaration.

*The remainder of this page intentionally left blank*

I swear under penalty of perjury that the forgoing is true and correct to the best of my knowledge.



Don J. Wood

JANUARY 22, 2004

# Exhibit 2

*Loss of public phones can hurt poor*

By Dan Kelly
Reading (PA) Eagle
March 11, 2003

Reading Eagle, Pennsylvania

March 11, 2003, Tuesday

**KR-ACC-NO:** RE-PUBLIC-PHONES

**LENGTH:** 456 words

**HEADLINE:** Loss of Public Phones Can Hurt Poor

**BYLINE:** By Dan Kelly

**BODY:**

The U.S. Telecommunications Act of 1996 deregulated the pay telephone industry with the intent of assuring wide deployment of pay phones throughout the country.

The bill's authors wanted to make sure everyone, especially people who could not afford private phone service in their homes, had access to the telephone network.

But in the past five years, pay phone service providers have been removing pay phones that don't produce a profit.

While most of those phones are in rural or otherwise remote areas that don't get a lot of traffic, many are being removed from inner cities, officials said.

That kind of market-driven distribution by the pay phone industry concerns public officials like William F. Richardson, director of the Berks Community Action Program, a non-profit agency that provides job- and language-training and other assistance to the city's poor and underemployed.

"You're getting into a real problem area here," Richardson said. "People are having to make some tough choices when it comes to paying for heat, or electric or the telephone."

Richardson said people faced with such choices usually chose to let the phone bill go rather than lose heat or electricity.

So when pay phones start disappearing from street corners, the poor may be forced to walk blocks to call a doctor or make other necessary calls.

An absence of public pay telephones in an area where they are needed would contradict the intent of the federal telecommunications act, officials said.

As a result, the state has put safeguards in place to ensure that pay phones don't disappear completely from areas where they are needed most, said David J. Lewis, division chief of the Consumer Assistance and Complaints for the state Public Utility Commission.

"We recently had the commissioners of a rural county contact us about a pay phone that was removed from an intersection where a store did a seasonal business," Lewis said.

If demand is high at one location, the phone company pays rent to the landowner. However, owners of unprofitable locations must pay the phone companies to keep a pay phone there.

In this case, the store owner was paying Verizon about $ 600 a year to keep the phone on the corner.

"In certain circumstances we don't even get a battle, and they just agree to keep the phone there and eat the expense because they understand the need," Lewis said.

Lewis said he also has received calls from private consumers complaining that pay phones are being removed from their urban neighborhoods.

"We handle each request to keep or replace a pay phone on a case-by-case basis," Lewis said.

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**JOURNAL-CODE:** RE

**LOAD-DATE:** March 11, 2003

# Exhibit 3

*Decrease in pay phones rings alarm;*
*As companies hang up on service, social activists and migrant groups worry*

By Wes Smith
Orlando (FL) Sentinel
January 13, 2004

Orlando Sentinel (Florida)

January 13, 2004 Tuesday, FINAL

**SECTION:** A SECTION; Pg. A1

**LENGTH:** 1006 words

**HEADLINE:** DECREASE IN PAY PHONES RINGS ALARM;
AS COMPANIES HANG UP ON SERVICE, SOCIAL ACTIVISTS AND MIGRANT GROUPS WORRY.

**BYLINE:** Wes Smith, Sentinel National Correspondent

**BODY:**

As BellSouth and other major phone companies yank pay telephones across the Southeast and nationwide because of the explosive increase in wireless phones, thousands of poor people are being cut off from essential services.

For many people, the corner pay phone is still a vital lifeline, said Lynn Rosenthal, executive director of the National Network to End Domestic Violence in Washington, D.C.

"Very often the home phone is ripped out during domestic violence," she said. "It is critical that women be able to run to the corner and use a pay phone."

In Orange County, Dawn Johnson, assistant manager of Belvins Motel on East Colonial Drive, recalled a similar incident in which a couple got into a fight.

"She ran to the pay phone outside our office to call police. If it hadn't been there, I don't know what she would have done," Johnson said. "A lot of people around here use pay phones, but they are few and far between anymore."

Rural communities, social activists and consumer groups are increasingly concerned about the loss of pay phones. And in some areas where wireless signals don't reach, pay phones provide the only way for people passing through to make a call.

"For the poor guy without a phone who is trying to find work, it's one more obstacle to get over," said Dee Davis at the Center for Rural Strategies, an Appalachia advocacy group in Whitesburg, Ky.

There are more than 150 million cell-phone subscribers in the United States, yet 40 percent of the U.S. population and one-third of U.S. households do not have wireless service. And nearly 5 percent of U.S. households have no phone at all.

Atlanta-based BellSouth once owned 143,000 pay phones in a nine-state region -- including 35,000 in Florida -- but by March it intends to hang up on all of them.

Nationwide, the number of pay phones has declined from 2.1 million in 1999 to about 1.4 million today, according to Bruce Renard, executive director of the Florida Public Telecommunications Association in Jacksonville, which represents about 70 independent owners.

In Florida there are 477 pay-phone providers with about 73,000 phones. That's down from 1,000 providers with 120,000 phones four years ago.

Before Congress approved the 1996 Federal Telecommunications Act, which deregulated the industry, state utility commissions guaranteed that pay phones were available in places where they were most needed. But with deregulation,

pay-phone companies were free to put them wherever they desired, which meant that unprofitable phones were unplugged.

"Since then we've seen a decline in the number of pay phones, especially in areas where they are needed the most," said Janee Briesemeister with the Consumers Union, publisher of Consumer Reports.

"Remember during the Northeast blackout last August when CNN had all that footage of people in New York City lined up to use pay phones?" she asked. "Cell-phone companies ran out of power, but pay phones worked."

Some areas, such as Orlando's tourist corridors, are still attractive to pay-phone operators, in part because the cell phones of travelers from abroad don't work here. Sprint Corp. is installing 350 new pay phones at convenience stores, hotels and other places.

Independent pay-phone operators will take over the more profitable former BellSouth locations, but less lucrative public phones in low-income and remote areas will be removed.

In the Federal Telecommunications Act, Congress provided for public-interest pay phones, but the Federal Communications Commission left funding up to each state.

There has been no call for public-interest pay phones in Florida despite its "dramatic decrease" in pay phones, said Kevin Bloom of the Florida Public Service Commission.

"If there are areas in Florida with no pay phones, we might ask the commission to look at public-interest pay phones," said Benjamin Ochshorn with Florida Legal Services in Tallahassee. "Public service commissioners have voiced concerns about pay phones disappearing and not working."

Pay phones are particularly important for Florida's migrant farm workers, who line up on evenings and weekends to place long-distance calls to family members in their native countries, said Tirso Moreno of the Farmworker Association of Florida office in Apopka.

Moreno's organization operates a grocery near a labor camp for 600 workers in south Miami-Dade County. When the store was moved to a new building, the pay-phone owner refused to install phones, Moreno said. At the old site, many of the migrant laborers had relied on the pay phones.

"The pay-phone company didn't want to replace them because the people in our community use [prepaid] phone cards, which the phone owners don't profit from," Moreno said.

Pay-phone providers will install telephones even in unprofitable locations if someone is willing to pay a monthly fee to have them there.

But Nilesh Patel, manager of the phone-free Texas Motel in Monroe, La., said that after BellSouth yanked the pay phone in his parking lot -- one of 7,000 pulled by the company in that state -- he couldn't afford to have it replaced.

"They wanted a guarantee of at least $50 a month, and I had to pay the difference if there weren't enough calls," he said.

Independent service providers will be more likely to snap up former BellSouth locations and open new sites if the FCC approves a pending request to double the amount of money that "dial-around" 800-number companies must dole out to pay phone owners.

Some consumer groups fear that the increase, if approved, would only add to the cost of making pay-phone calls, most of which are now 50 cents or more.

But across the country, independent pay-phone providers say increasing costs and competition make it tough for them to stay on the line.

"If the FCC acts quickly on that, then independent providers will be able to fill the gap," said Renard of the Florida Public Telecommunications Association. "If they don't, there will be many more locations that simply go without service."

**GRAPHIC:** PHOTO: Last call? Pay telephones -- such as this one, featuring an ad in Spanish, outside an east Orlando post office -- are growing scarce in some areas.

BOBBY COKER/ORLANDO SENTINEL

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CHART: PAY PHONES ON THE DECLINE
As the popularity of wireless phones continues to rise, the number of pay phones in Florida and across the nation has decreased.
Total pay phones in Florida
1999: 120,650
2003: 73,000
Total pay phones in U.S.
1999: 2.1 million
2003: 1.4 million
SOURCE: Florida Public Telecommunications Association
ORLANDO SENTINEL

**LOAD-DATE:** January 14, 2004

# Exhibit 4

*Verizon booths*

By Joe Carmean, Jr.
Daily Times (Salisbury, MD)
February 24, 2003

Daily Times (Salisbury, MD)

February 24, 2003 Monday

**SECTION:** LOCAL NEWS - WEEKEND; Pg. 1

**LENGTH:** 613 words

**HEADLINE:** Verizon booths

**BYLINE:** Joe Carmean

**BODY:**

By Joe E. Carmean Jr.

Daily Times Staff Writer

OCEAN CITY -- Pay phones are becoming obsolete as the world goes wireless.

Despite attempts by companies to make public telephones profitable again with added features -- including deals for extended chat time -- the cellular market nets thousands of new users every day.

"Removing the pay phone is the last resort, but something we're being forced to do more often these days," said Paul Francischatti, vice president of marketing and business development for Verizon's Public Communications Group.

But the company isn't yet ready to give up on public phone users, though Verizon continues to move into the wireless industry and, in 1999, became more aggressive about removing pay phones, he said.

"The profitability of a (telephone) station depends very simply on its use, and usage has been declining for a number of years," Francischatti said.

Since Verizon's merger with GTE in 2000, he said, pay phone stations have been cut by at least 15 percent. But Francischatti also said the pay phone removal trend is expected to slow down.

"These types of things are always reactionary," he said.

Francischatti said attempts are made to attract more people to use a pay phone before it is removed.

"Frankly, 15 years ago we didn't have to worry about it," he said. "You'd just put the phone in and forget about it and know it was going to make money. That isn't the case anymore."

Only about 35 of the 105 public phones in Ocean City will remain after Verizon begins removing them in the next few weeks, Ocean City Councilman Vince Gisriel said.

"That's a lot of pay phones disappearing, and if we wanted to keep any of them that are on public property we would have to start paying them a monthly fee," he said. "It would cost us about $76,000 to keep all the phones, which became a cost savings issue."

Gisriel said he asked Verizon to keep some phones in Ocean City for public safety, but the company declined.

"So streets where people once saw three or four phones there will only be one," he said. "While I understand the reasons for removing them, we're a host community to more than 8 million people a year, and not everybody has cell phones yet."

Gisriel said it isn't just Ocean City where he is noticing the disappearance of pay phones.

"Driving from Salisbury to Ocean City there aren't very many left," he said. "You really have to ride around and look for them."

Verizon has been investing about $4 billion yearly into its wireless network to expand service and add users, said John Johnson of Verizon Wireless.

"And as prices keep going down for wireless use, the buckets of minutes keep going up," he said.

Nationally, Verizon has more than 32.5 million customers and had one of its best years for attracting new customers last year, Johnson said.

"We obviously don't believe the market is tapped out," he said. "And forecasts from analysts say wireless will continue to strongly draw more users for the next several years."

All of the major wireless providers -- AT&T, Cingular, Nextel, T-Mobile, Sprint PCS and Verizon -- showed heavy gains this year.

Francischatti said there are some people who still use their cell phones and pay phones.

"There is an obvious correlation between the rise in cellular use and decline in public phone use," he said. "That doesn't mean there isn't still a need for pay phones."

Francischatti said he only plans five years into the future and doesn't see pay phones phasing out completely anytime soon.

"But, 20 or 30 years from now, who knows," he said.

* Reach Joe E. Carmean Jr. at 410-749-7171, Ext. 283, or jcarmean@smgpo.gannett.com.

**LOAD-DATE:** June 11, 2003

# Exhibit 5

New Hampshire Public Utilities Commission
Order No. 24,008
July 9, 2002

**DT 02-050**

**Petition for Designation of Acworth Payphone as A Public Interest Payphone (PIP)**

**Order Approving Acworth Payphone as a PIP and Establishing Procedural Schedule to Consider Funding Mechanism**

**O R D E R N O. 24,008**

**July 9, 2002**

## I. BACKGROUND

In response to a Petition for Designation of a Payphone in Acworth, New Hampshire as a Public Interest Payphone, filed on March 27, 2002, and pursuant to an Order of Notice issued on April 15, 2002, the New Hampshire Public Utilities Commission (Commission) convened a public hearing and pre-hearing conference on May 17, 2002. At the pre-hearing conference, the Commission accepted appearances of Alan Linder, Esq. of New Hampshire Legal Assistance (NHLA) on behalf of Heidi Simoneau and Joan Guerrlick; Hanford Auten on behalf of the Acworth Historical Society, Inc. and Acworth Community Project, Inc. (AHS); Victor Del Vecchio of Verizon New Hampshire (Verizon); Deborah Mozden, Director of Women's Supportive Services (WSS); Laurie Jewett on behalf of Southwestern Community Services(SCS); Linda Griebsch, Director of the New Hampshire Coalition Against Domestic and Sexual Violence (Coalition); Anne Ross, Esq. of the Office of the Consumer Advocate (OCA) on behalf of New Hampshire residential

ratepayers; and the Staff of the Commission (Staff). The Commission also accepted public comments regarding the Petition from: Deborah J. Mozden, of WSS; Alan Linder of NHLA; Hanford Auten of AHS; Laurie Jewett of SCS; Victor Del Vecchio of Verizon; Anne Ross of the OCA; Representative Jay Phinizy; Senator George Disnard; George Ross, Director of Hospital & Consumer Affairs of West Central Behavior Health Recovery Center; and Commission Staff. In addition to the individuals heard at the pre-hearing conference, the Commission received numerous letters in support of retaining the payphone at the Acworth Country Store.

In accordance with Section 276(b)(2) of the Telecommunications Act of 1996 (TACT), the Federal Communications Commission (FCC) directed individual state public utility commissions to investigate whether there was a need for a program to support Public Interest Payphones (PIPs) in their respective states. I*mplementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, *Report and Order* (*FCC Payphone Order*), 11 F.C.C.R. 20,341, 11 FCC Rcd. 20,541, 4 Communications Reg. (P&F) 938 (1996), *Order on Reconsideration (FCC Payphone Recon Order*, 11 F.C.C.R. 21,233, 11 RCC Rcd. 21,233, 5 Communications Reg.(P&F) 321 (1996). In

response, the Commission determined that a need for such a program existed in New Hampshire, and directed that a process be established for evaluating individual locations according to a comprehensive definition of a public interest payphone (PIP). In addition, it was noted that once a location was determined to satisfy the definition, a funding source to support the PIP would have to be developed. *Public Interest Pay Phones*, 83 NH 654, 658 (1998).

The process for determining the status of a payphone was established in Order No. 23,706, Investigation Pursuant to Section 276(b)(2) of the Telecommunications Act of 1996, Order Approving Revised Definition and Proposed Method for Designation of Public Interest Payphones (PIP Order), (May 17, 2001). That process requires an investigation and report to the Commission by Staff, which assesses the payphone in terms of the nine criteria in the definition of a PIP. The Commission is then to issue its determination based upon Staff's report. PIP Order at 6. A negative determination by the Commission results in a 30-day opportunity for a petitioner to revise its petition or request a formal hearing before the Commission. *Id.*

In the instant case, the Commission directed Staff to investigate and file its report by June 17, 2002. Staff

duly filed its report and recommended designation of the Acworth payphone as a PIP. Having carefully reviewed Staff's report, we conclude, on the basis of our analysis below, that the Acworth payphone meets the definition of a PIP. Therefore, this order also establishes a process for developing a funding source for a PIP.

## II. COMMISSION ANALYSIS

A particular payphone must meet each of the nine criteria enumerated in the *PIP Order* in order to qualify as a PIP unless the Commission grants a waiver. *Id.* at p. 4. The Acworth payphone meets eight of those criteria, according to Staff's report. In brief, the Acworth payphone fulfills a public welfare, health and safety policy objective (Item 1), as demonstrated by the comments of healthcare and safety officers. It will not otherwise exist as a result of market forces (Item 2), as demonstrated by Verizon's current plan to remove the phone for lack of income and by the absence of other providers willing to provide the service without public assistance. It is a single, stand-alone payphone and not one of a bank of payphones (Item 4); it is not a coin-less payphone (Item 5); it is physically accessible to the general public 24 hours per day (Item 7); and no other payphone is located less than 751 feet away as measured along the route of

ordinary pedestrian travel (Item 8). Also, the Acworth payphone accepts incoming sent-paid calls (Item 6), and provides zero compensation to the owner of the property where it is located (Item 9).

The Acworth payphone does not meet one criterion, Item 3. This item requires that a demonstration of "need" be shown by a minimum number of 3.5 calls per day, where usage can be measured, or by minimum revenues of $30.00 per month on an annual average basis. Staff reports that its review of proprietary Verizon data shows that the Acworth payphone annualized usage is over 3.0 calls per day, but under the required daily usage rate of 3.5 calls. Staff's report recommends that the Commission waive the Item 3 requirement of 3.5 calls per day average usage.

Pursuant to Section II(2), of Order No. 23,706, the Commission may waive any of the PIP definition criteria "upon petition demonstrating extraordinary circumstances." *Id.* at 5. Here, the record demonstrates that the geography of Acworth currently precludes cellular service and that law enforcement and public health officials believe that the Acworth payphone is a critical resource to the population of this rural area. We note that Staff's interviews with local police chronicle specific, recurring instances where the

Acworth payphone was instrumental in the provision of safety services. We also note the comments made by the state legislative representatives of Acworth regarding the health, safety and underlying economic reasons to designate the Acworth payphone as a PIP.

We find that extraordinary circumstances exist which warrant waiving the "calls per day" or "need" criterion. Therefore, we accept Staff's recommendation and will grant a waiver of the requirement under Item 3 of the PIP definition. We further find that all of the remaining conditions are met. Accordingly, we will designate the Acworth payphone as a PIP.

## III. PROCESS FOR DEVELOPING A FUNDING SOURCE

Under the *PIP Order* a funding source for support of the Acworth PIP is to be established before the date that Verizon plans to remove that payphone, which it indicated would occur no sooner than March, 2003. Parties to this docket and those who participated in Docket No. DE 98-048 are requested to file written proposals for funding, consistent with federal and state requirements.

Section 276(b)(2) of the TACT assigned the FCC the task of ensuring that PIPs are supported "fairly and equitably." The FCC, in turn, directed states to use their discretion in choosing a funding method for PIP programs, subject to the following guidelines: A funding mechanism shall (1) operate in a competitively neutral fashion; (2) compensate payphone providers fairly for providing PIPs; and (3) fairly and equitably distribute the costs of the program without cross-subsidies from regulated to non-regulated

operations. (*See, FCC Payphone Order,* ¶¶ 264,283.)

In ¶¶283-284 of the *FCC Payphone Order*, the FCC suggested several methods by which a state could fund PIPs, including: (1) from general state revenues; (2) from a state universal service fund (USF); or (3) by including requirements for placing non-profitable payphones as part of voluntary contractual arrangements with payphone services providers that provide profitable payphones on public property. The FCC's list is not exhaustive and is stated in permissive terms; thus we conclude that these are not the only methods available for funding.

New Hampshire has no USF at present, and it is therefore not a viable method for funding the Acworth PIP. In Docket DT 00-015, *Universal Service*, 85 NH PUC 838 (2000), the Commission determined that a USF was not necessary at this time. The order, however, adopted the FCC's definition of Universal Service, and established criteria consisting of six events that could trigger the need for a USF.

Subsequently, in RSA 374:22-p, effective July 1, 2001, the General Court reserved to itself the authority to establish a USF and/or a universal service program. According to Sections III and V of the statute, the goal of RSA 374:22-p is to provide affordable basic telephone services and raise

the low income penetration level as close as reasonably possible to the statewide average. The statute requires the Commission to require carriers to contribute to a fund only "after the statutory establishment of a USF." RSA 374:22-p, IV(a). Prior to requiring contribution and prior to statutory action establishing a USF, the Commission is to inform the legislature of the expected costs of the program, the type of funding, the number of people expected to be served, the projected level of service and administrative design of the fund. *Id.* at IV(d). The Commission is to draft rules to implement the statute, consistent with the six criteria. *Id.* at IV(b). Section VI permits the Commission to fund PIP via the statutorily created USF.

Since a USF is not in place, we conclude that an alternative method must be devised for the Acworth PIP. If a USF is established, however, the funding responsibility for the Acworth PIP may be able to be transferred to the USF. We direct that funding mechanism proposals be filed within 30 days of the date this order is issued. Subsequent to the filings, we direct that the parties and Staff meet in technical session for discussion of all the proposals and to attempt to reach agreement, if possible, on one proposal to recommend for adoption in New Hampshire. These discussions

are to be held according to the following schedule:

Technical Session September 10, 2002

Filing of Joint Proposal

September 24, 2002

Hearing October 24, 2002

Finally, the Commission will grant all of the oral and filed requests for intervenor status.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the Acworth payphone is hereby designated as a Public Interest Payphone; and it is

**FURTHER ORDERED**, that the procedural schedule detailed herein is hereby approved; and it is

**FURTHER ORDERED**, that requests for intervenor status, including those made orally at the prehearing conference, are hereby granted.

By order of the Public Utilities Commission of New Hampshire this ninth day of July, 2002.

| Thomas B. Getz | Susan S. Geiger | Nancy Brockway |
|---|---|---|
| Chairman | Commissioner | Commissioner |

Attested by:

Debra A. Howland
Executive Director & Secretary

# Exhibit 6

*BellSouth to drop pay phones at 3,400 locations in Kentucky*

By Bill Wolfe
The Courier-Journal (Louisville, KY)
January 3, 2004

The Courier-Journal (Louisville, KY)

January 3, 2004 Saturday metro Met Edition

**SECTION:** BUSINESS; Pg. 1F

**LENGTH:** 1175 words

**HEADLINE:** BellSouth to drop pay phones at 3,400 locations in Kentucky

**BYLINE:** WOLFE BILL, bwolfe@courier-journal.com

**BODY:**

Byline: BILL WOLFE

Source: The Courier-Journal

In the next three months, BellSouth plans to pull the plug on 3,400 pay phones in Kentucky as the company abandons its shrinking coin-phone operations nationwide.

In the meantime, Kentucky's Public Service Commission will consider whether it needs to step in to make sure that no communities are left without pay-phone access. And the PSC has denied, at least for the moment, BellSouth's request to be released from a requirement that it supply at least one public coin phone in each of its exchanges.

BellSouth may fulfill its requirement by contracting with other pay-phone companies for service. The PSC will consider creation of a "public-interest pay-phone" program to bring phones to areas where the free market has not been able to attract a provider.

BellSouth announced its intention to end pay-phone operations in 2001, but later delayed its exit date. With the growing use of cell phones, the coin-phone operation no longer was a core business, the company said.

"Pay phones have been sort of a dying business for some time now," PSC spokesman Andrew Melnykovych said. "The rise of the cell phone ... has really put a dent in the demand for pay phones. ... They are just not as profitable as they once were."

In 1999, according to papers filed with the PSC, Kentucky had 26,552 coin phones. By April 2001, it had 21,244. A year later, the total was fewer than 19,000. Nationally, the number of pay phones has dropped from 2.1 million to 1.5 million since 1999, according to the National Payphone Clearinghouse.

On Dec. 24, the PSC approved BellSouth's formal request to end its pay-phone service by March 31, though in a deregulated era, permission wasn't actually needed, the PSC said.

Still, some people question whether competitive pay-phone companies will be able to fill the gap when BellSouth leaves the market.

"BellSouth would love for the private pay-phone providers to take over every location, and that's just not going to happen," said George Sowards, executive director of the Kentucky Payphone Association. Plenty of companies will be eager for high-traffic, high-profit locations, but it may be hard to persuade companies to put phones in remote or sparsely populated areas that generate few calls.

Such locations may need pay phones the most, argues Winchester Mayor Dodd D. Dixon, who filed comments with the PSC concerning BellSouth's exit from the market.

"There are citizens who are very poor, perhaps transient, that do not have a land line or wireless telephone," Dixon said in an Oct. 22 letter to the commission.

"If we lost the pay phone, I'm concerned about the health, welfare and safety of the people," Dixon said in an interview. Abandoning pay-phone locations creates "a health and safety problem where none existed before. Ambulance service and police protection and all those things rely" on public access to phones.

The Louisville-based Metro Human Needs Alliance, which is made up of 30 community nonprofit and governmental agencies, also raised a caution flag over the decline of pay phones, arguing in a filing with the PSC that the phones "provide basic communication" for many low-income clients.

"We're very happy that the commission has decided to take a closer look at this issue and to see what is the need for public-interest phones at this point," said Lisa Kilkelly, a staff attorney with the Legal Aid Society, which is representing the alliance in the PSC case.

Despite the state's rules on pay-phone access, 10 local exchanges in BellSouth territory have no public coin phones. These are oversights in areas that have never requested installation of a pay phone, said Ellen Jones, regional manager for BellSouth in Louisville.

In addition, BellSouth is the only company supplying pay phones in 18 exchanges, according to documents filed with the PSC. If other companies don't move in to BellSouth's vacated areas, about 20 percent of the company's exchanges will have no pay phone, according to the Metro Human Needs Alliance.

Pay phones are relatively abundant in Louisville, where many exchanges have hundreds of pay phones. But the alliance wants to make sure the area continues to be well served, Kilkelly said.

"It seems like the trend is for the number to be decreasing, particularly if a company like BellSouth has made the decision that it's not economically viable to stay in this market," she said.

The alliance recommended that the PSC look into creating a mechanism for placing public-interest pay phones in underserved locations, possibly adopting a system similar to one in Indiana. The Indiana Utility Regulatory Commission considers requests from government units, such as cities, schools and libraries for placement of phones, and then works to provide a phone and funding if the request is approved.

But Indiana has had relatively little call for public-interest pay phones. "We've had the application process in place since 1998," said Kris Wheeler, general counsel. "So far, we have had three applications." In each case, the commission was able to place a phone without public funding.

Indiana also has seen a sharp drop in its total number of pay phones, from 43,384 in 1999 to 33,647 last year.

"I think there's a few other states that have public-interest programs," Kilkelly said. "We'll probably look at some of the other states."

Winchester Mayor Dixon said Kentucky also might consider using some of its universal service fund, collected through a surcharge on phone bills to subsidize public-interest phones.

"That's clearly an option that somebody ought to be taking a look at," Sowards said, especially for remote areas that don't have pay phones now. "The reason they are not there is they are just not profitable."

But for more developed areas, Sowards said, private enterprise will meet the need, and independent pay-phone companies will prosper from BellSouth's exit. "I've got about 15 or 20 proposals" from sites looking to replace their BellSouth pay-phone service, said Sowards, who also runs Premier Payphone Services in Bowling Green.

The pay-phone industry in Kentucky will survive, and the damage from cell-phone competition may have bottomed out, he said.

"I think we're going to see one more big hit where the number of pay phones in Kentucky are reduced" - when BellSouth leaves the business, he said. "And then, I think we're at the bottom of the trough."

Update

Last we knew:

In 2001, BellSouth said it planned to get out of the pay-phone business.

The latest:

BellSouth will stop operating 3,400 pay phones in Kentucky by March 31. The Public Service Commission will still require one public pay phone for each exchange, but will allow BellSouth to farm out that business.

Why it's news:

With the increasing popularity of cell phones, pay phones are no longer the moneymakers they once were. Their supporters argue that public pay phones provide access for people who can't afford cell phones.

For more info:

www.bellsouth.com

www.psc.state.ky.us

**GRAPHIC:** BY ARZA BARNETT, THE COURIER-JOURNAL; Garrett Saulmon removed a pay phone from where the taxis line up in the rental car area at Louisville International Airport.BY ARZA BARNETT, THE COURIER-JOURNAL; Some question whether there will be enough pay phones left.

**LOAD-DATE:** January 6, 2004

## CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2004, the foregoing Reply Comments of the American Public Communications Council was delivered via first-class U.S. Mail, postage pre-paid to the following parties:

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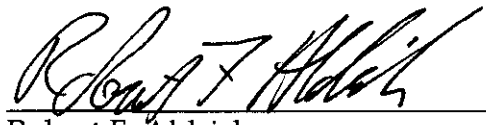

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